

PETITION FOR WRIT OF HABEAS CORPUS: 28 USC §2254 (Rev. 9/10)
ADOPTED BY ALL FEDERAL COURTS IN TEXAS

United States Courts
Southern District of Texas
FILED

IN THE UNITED STATES DISTRICT COURT

APR 15 2020

FOR THE Southern DISTRICT OF TEXAS

David J. Bradley, Clerk of Court

Houston DIVISION

PETITION FOR A WRIT OF HABEAS CORPUS BY
A PERSON IN STATE CUSTODY

Kendrick Demond Whitmill
PETITIONER
(Full name of Petitioner)

Darrington Unit
CURRENT PLACE OF CONFINEMENT

vs.

02135198

PRISONER ID NUMBER

RESPONDENT
(Name of TDCJ Director, Warden, Jailor, or
authorized person having custody of Petitioner)

CASE NUMBER
(Supplied by the District Court Clerk)

INSTRUCTIONS - READ CAREFULLY

1. The petition must be legibly handwritten or typewritten and signed and dated by the petitioner, under penalty of perjury. Any false statement of an important fact may lead to prosecution for perjury. Answer all questions in the proper space on the form.
2. Additional pages are not allowed except in answer to questions 11 and 20. Do not cite legal authorities. Any additional arguments or facts you want to present must be in a separate memorandum. The petition, including attachments, may not exceed 20 pages.
3. Receipt of the \$5.00 filing fee or a grant of permission to proceed *in forma pauperis* must occur before the court will consider your petition.
4. If you do not have the necessary filing fee, you may ask permission to proceed *in forma pauperis*. To proceed *in forma pauperis*, (1) you must sign the declaration provided with this petition to show that you cannot prepay the fees and costs, and (2) if you are confined in TDCJ-CID, you must send in a certified *In Forma Pauperis* Data Sheet form from the institution in which you are confined. If you are in an institution other than TDCJ-CID, you must send in a certificate completed by an authorized officer at your institution certifying the amount of money you have on deposit at that institution. If you have access or have had access to enough funds to pay the filing fee, then you must pay the filing fee.

5. Only judgments entered by one court may be challenged in a single petition. A separate petition must be filed to challenge a judgment entered by a different state court.
6. Include all of your grounds for relief and all of the facts that support each ground for relief in this petition.
7. Mail the completed petition and one copy to the U. S. District Clerk. The "Venue List" in your unit law library lists all of the federal courts in Texas, their divisions, and the addresses for the clerk's offices. The proper court will be the federal court in the division and district in which you were convicted (for example, a Dallas County conviction is in the Northern District of Texas, Dallas Division) or where you are now in custody (for example, the Huntsville units are in the Southern District of Texas, Houston Division).
8. Failure to notify the court of your change of address could result in the dismissal of your case.

PETITION

What are you challenging? (Check all that apply)

A judgment of conviction or sentence, probation or deferred-adjudication probation. (Answer Questions 1-4, 5-12 & 20-25)

A parole revocation proceeding. (Answer Questions 1-4, 13-14 & 20-25)

A disciplinary proceeding. (Answer Questions 1-4, 15-19 & 20-25)

Other: Jail time credit (Answer Questions 1-4, 10-11 & 20-25)

All petitioners must answer questions 1-4:

Note: In answering questions 1-4, you must give information about the conviction for the sentence you are presently serving, even if you are challenging a prison disciplinary action. (Note: If you are challenging a prison disciplinary action, do not answer questions 1-4 with information about the disciplinary case. Answer these questions about the conviction for the sentence you are presently serving.) Failure to follow this instruction may result in a delay in processing your case.

1. Name and location of the court (district and county) that entered the judgment of conviction and sentence that you are presently serving or that is under attack: Walker County 1100
University Ave., Suite 209 Huntsville, Tx 77340
2. Date of judgment of conviction: 05/08/2017
3. Length of sentence: 4 yrs
4. Identify the docket numbers (if known) and all crimes of which you were convicted that you wish to challenge in this habeas action: 27382

Judgment of Conviction or Sentence, Probation or Deferred-Adjudication Probation:

5. What was your plea? (Check one) Not Guilty Guilty Nolo Contendere

6. Kind of trial: (Check one) Jury Judge Only

7. Did you testify at trial? Yes No

8. Did you appeal the judgment of conviction? Yes No

9. If you did appeal, in what appellate court did you file your direct appeal? Court of Criminal Appeals of Texas

Cause Number (if known): T.C. Ct. No. 27382 A-1What was the result of your direct appeal (affirmed, modified or reversed)? Dismissed (Conviction Not Final)What was the date of that decision? 8/7/2019

If you filed a petition for discretionary review after the decision of the court of appeals, answer the following:

Grounds raised: _____

Result: _____

Date of result: _____ Cause Number (if known): _____

If you filed a petition for a *writ of certiorari* with the United States Supreme Court, answer the following:Result: Dismissed without prejudice failure to exhaust state remediesDate of result: 10/23/2019

10. Other than a direct appeal, have you filed any petitions, applications or motions from this judgment in any court, state or federal? This includes any state applications for a writ of habeas corpus that you may have filed. Yes No

11. If your answer to 10 is "Yes," give the following information:

Name of court: _____

Nature of proceeding: _____

Cause number (if known): _____

Date (month, day and year) you filed the petition, application or motion as shown by a file-stamped date from the particular court: _____

Grounds raised: _____

Date of final decision: _____

What was the decision? _____

Name of court that issued the final decision: _____

As to any second petition, application or motion, give the same information:

Name of court: _____

Nature of proceeding: _____

Cause number (if known): _____

Date (month, day and year) you filed the petition, application or motion as shown by a file-stamped date from the particular court: _____

Grounds raised: _____

Date of final decision: _____

What was the decision? _____

Name of court that issued the final decision: _____

If you have filed more than two petitions, applications or motions, please attach an additional sheet of paper and give the same information about each petition, application or motion.

12. Do you have any future sentence to serve after you finish serving the sentence you are attacking
in this petition? Yes No

(a) If your answer is "Yes," give the name and location of the court that imposed the sentence
to be served in the future: _____

(b) Give the date and length of the sentence to be served in the future: _____

(c) Have you filed, or do you intend to file, any petition attacking the judgment for the sentence you must serve in the future? Yes No

Parole Revocation:

13. Date and location of your parole revocation: _____

14. Have you filed any petitions, applications or motions in any state or federal court challenging your parole revocation? Yes No

If your answer is "Yes," complete Question 11 above regarding your parole revocation.

Disciplinary Proceedings:

15. For your original conviction, was there a finding that you used or exhibited a deadly weapon?
 Yes No

16. Are you eligible for release on mandatory supervision? Yes No

17. Name and location of the TDCJ Unit where you were found guilty of the disciplinary violation:

Disciplinary case number: _____

What was the nature of the disciplinary charge against you? _____

18. Date you were found guilty of the disciplinary violation: _____

Did you lose previously earned good-time days? Yes No

If your answer is "Yes," provide the exact number of previously earned good-time days that were forfeited by the disciplinary hearing officer as a result of your disciplinary hearing:

Identify all other punishment imposed, including the length of any punishment, if applicable, and any changes in custody status:

19. Did you appeal the finding of guilty through the prison or TDCJ grievance procedure?
 Yes No

If your answer to Question 19 is "Yes," answer the following:

Step 1 Result: _____

Date of Result: _____

Step 2 Result: _____

Date of Result: _____

All petitioners must answer the remaining questions:

20. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting them.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

A. **GROUND ONE:** Article 42.03 provides that all criminal cases the judge of court in which defendant was convicted shall give defendant credit on his sentence for said cause

Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

I Kendrick Demond Whitmire earnestly request that I be awarded jail time credit on cause number 27382 for the time I spent in Smith County jail when Walker County placed a FTA warrant docket number 27382 on 09/17/2015 to 12/06/2016 as I was awaiting transport to court on 12/06/2016 but I was instead, mistakenly released with charge pending on cause 27382

B. **GROUND TWO:** violation of my rights to due process of law and equal protection of the law 5th, 6th, 8th, and 14th Amendment to U.S Constitution

Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The fact is I was in custody of Texas county jail and TOCJ at the time FTA warrant 27382 was active and pending on the specific dates 09/17/2015 to 12/06/2016 and I shall be credited that time I spent in custody to go towards the same cause number and original current sentence I'm serving now on Evading Arrest Det w/vehicle cause number 27382

C. GROUND THREE: I Kendrick Demond Whitmille did in fact exhaust state remedies.

Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

I have enclosed several documents of proof that I exhausted all state remedies including original letters from State Counsel for Offenders stating I may be entitled to more jail time credit than I was awarded on my sentence date 5/8/2017.

D. GROUND FOUR: My TDCJ sentence date is 5/8/2017, but the record doesn't reflect it. My warrant was recalled 12/18/2016 & not 01/11/2017

Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

I turned myself into Walker County Court on 12/18/2016 after my erroneous release 12/06/2016. The judge Donald Kramer lifted the warrant that day & scheduled me to court in Jan, Feb, Mar, Apr, May. The warrant was lifted on 12/18/2016 & not 01/11/2017 that's stamped on the copy of warrant. My sentence begin date isn't 01/10/2017 as it reflects in TDC records. The judge is out of compliance with law enforcing false imprisonment.

21. Relief sought in this petition: I earnestly seek additional jail time credit that I spent in jail on the said cause number 27382 on the dates of 09/17/2015 to 12/06/2016 be awarded to my current 4yr sentence and same cause number 27382 on my 5/8/2017 conviction and for the record to reflect the fact at TDCJ office in Huntsville, TX

22. Have you previously filed a federal habeas petition attacking the same conviction, parole revocation or disciplinary proceeding that you are attacking in this petition? Yes No
If your answer is "Yes," give the date on which each petition was filed and the federal court in which it was filed. Also state whether the petition was (a) dismissed without prejudice, (b) dismissed with prejudice, or (c) denied.

If you previously filed a federal petition attacking the same conviction and such petition was denied or dismissed with prejudice, did you receive permission from the Fifth Circuit to file a second petition, as required by 28 U.S.C. § 2244(b)(3) and (4)? Yes No

23. Are any of the grounds listed in question 20 above presented for the first time in this petition?
 Yes No

If your answer is "Yes," state briefly what grounds are presented for the first time and give your reasons for not presenting them to any other court, either state or federal.

24. Do you have any petition or appeal now pending (filed and not yet decided) in any court, either state or federal, for the judgment you are challenging? Yes No

If "Yes," identify each type of proceeding that is pending (i.e., direct appeal, art. 11.07 application, or federal habeas petition), the court in which each proceeding is pending, and the date each proceeding was filed.

25. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

- (a) At preliminary hearing: _____
- (b) At arraignment and plea: _____
- (c) At trial: _____
- (d) At sentencing: _____
- (e) On appeal: _____
- (f) In any post-conviction proceeding: _____

(g) On appeal from any ruling against you in a post-conviction proceeding: _____

Timeliness of Petition:

26. If your judgment of conviction, parole revocation or disciplinary proceeding became final over one year ago, you must explain why the one-year statute of limitations contained in 28 U.S.C. § 2244(d) does not bar your petition.

¹ The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), as contained in 28 U.S.C. § 2244(d), provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -
 - (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
 - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;
 - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
 - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.
- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct
and that this Petition for a Writ of Habeas Corpus was placed in the prison mailing system on

_____ (month, day, year).

Executed (signed) on _____ (date).

Kendrick Demond Whitmire
Signature of Petitioner (required)

Petitioner's current address: Darrington Unit 59 Darrington rd Rosharon, Texas
77583